S Bijapur 6/53

1953 **File No**

Legal **DEPARTMENT**
E. **BRANCH**

Examined

Subject:— Suits Bijapur

Civil suit- No 190 of 1952—

Hanmantrao Nanasaheb Ghorpade ..... Plff.

vs

The state of Bombay ....

For possession of the suit lands, mesne profits from the date of the suit and costs.

51(E)

File No. S Bij 6/53

6/53

C.S.No. 90 of 1952.

In the Court of the Civil Judge, Sr. D. Bijapur.

1. Hanmantrao Ganapatrao Ghorpade, Machaknur, age 50, Hindu, Occupation Land-lord and agriculture, residing at Rajarampuri, 9th Lane, Kolhapur. ... Plaintiff

Vs.

1. The State of Bombay. ... Defendant.

Claim Rs.427/8- for Court fees and Rs.5000/- for pleaders fees and Jurisdiction.

The plaintiff begs to state as follows :

1. This suit is for obtaining possession of the suit lands from the Defendant and for other reliefs.

2. The suit properties are R.S.No.1 measuring 26 acres and 13 gunthas assessed at Rs.21-0-0 and R.S.No.12 measuring 20 acres 36 gunthas at Rs.3 situated at Machaknur-taluka Mudhol, Dist.Bijapur. They are the ancestral lands of the Plaintiffs family and have been of their ownership for years in past. The suit lands are and always were Rayatwa lands and described as Seri lands. The word "Seri" means land in possession and enjoyment of the members belonging to the family name the family of the Princes. The Plaintiff and his ancestors do belong to the Royal family of the erstwhile State of Mudhol.

It is not true to say that the suit lands are the ancestral property of the plaintiff the Village Machaknur was farmed to the paternal grand-father of the plaintiff Raja Govindrao about the year 1820 A.D. for Rs.800/- i.e. the revenue of the village. The plaintiff represents branch of the ~~xxxxx~~ ruling family of Mudhol State. While the village was under his manggement the grand father of the plaintiff gifted the suit lands along with S.No.4 of Machaknur to one Shrimati Tanibai about the year 1864. Subsequently Tanibai's daughter Radhabai sold the suit lands to the father of the plaintiff in the year 1909. The management of the village was withdrawn from the plaintiff's father in 1906. As the gift of the suit lands and the subsequent purchase by the plaintiff's father was all unauthorised the lands were resumed in the year 1929. The lands are service inam lands assigned for Bargir service.

The suit lands are not the seri lands belonging to the plaintiff's family. In fact they belonged to the Raja of Mudhol State who has subsequently transferred them to the State under the head "service inam" in the year 1906-07(P-37-39 file-I)

Raja Govindrao had no right to make gift deed of the lands which did not belong to him.

~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~

Raja Govindrao had no right to make a gift deed of the lands which did not belong to him.

3. Raja Govindrao Maharao Ghorpade the paternal grand father of the plaintiff who was in possession thereof as full owner, made a gift of the same in favour of one Tanibai who was Raja Govindrao's mistress in about the year 1860. Tanibai took possession of these lands by way of gift deeds made in her favour by Raja Govindrao Ghorpade. Tanibai enjoyed these properties till her death.

Raja Govindrao died in about 187. and Tanibai died in about 1880. Tanibai had no male issue but she had a daughter who was married to one Raghobagal of Machaknur, taluka Mudhol. So the properties being Rayatawa, her daughter namely Radhabai W/o Raghobagal of Machaknur inherited these lands after the death of Tanibai. Under the Hindu Law, the properties were inherited by her and entered in her name in the Govt. records.

The suit lands are not rayata; they being service inam lands. Radhabai the only daughter of the deceased holder Tanibai was recognised as her heir in the year 1880.

The sale of the suit lands to the plaintiff's father in the year 1909 was void as it was against the provisions of the Rules governing service inams in Mudhol State.

5. As the suit lands were Rayatawa, and only heir to the deceased Tanibai, Radhabai took possession of the suit lands as full owner and enjoyed them upto ~~1908~~ 1909.

6. on 30-6-1909, Nanasaheb Govindrao Ghorpade the father of the Plaintiff purchased the suit lands by a registered document for Rs.1500/- from the said Radhabai W/o Ragho Bagal, took possession of them and made wahiwat of these lands till his death which occured in 1915.

7. When Nanasaheb Ghorpade died the present plaintiff was a minor. So the late Rajasahib of Mudhol, H.H.Raja Malojirao Venkatrao Ghorpade, being the guaridan of the present plaintiff, took possession of all the properties of the Plaintiff, including the suit lands as the Mudhol Darbar and managed them as guardina and trustee of the Plaintiff and no other capacity. Plaintiff attained majority in 1927 and by order No.20 of 1927 dated 25-1-1927 of the said H.H.Raja Malojirao all the ~~xxixxix~~ properties of the plaintiff including the suit lands were handed over to the plaintiff. The order of Rajasahib of Mudhol given in 1915, by which the Plaintiff's properties were taken into possession by the Mudhol Darbar and the order of 1927 by which the Plaintiff's properties were given into possession includes the suit lands.

The allegations contained in this paragraph are not true. It was ordered under Huzur order No.480 of 16-1-1915 that the suit lands should be ~~xxxxxxxx~~ continued in possession of the plaintiff during the life time of the alienor Radhabai only. She died in the year 1918. But this fact did not come to the notice of the State authorities till to the year 1929 when it was directed by the Rajasahib under his No.324/29-30 dated 5-10-29 that the lands should be ~~resumed as no service was~~ performed or required to be performed. The plaintiff requested the Diwan on 9-11-29 to restore the lands to him. But his request was refused under his No.1111 dated 28-3-1930 in persuance of the above orders of Rajasaheb.

8. Unfortunately, in the beginning of 1930, the relations between Plainiff and the Rajasahbi of Mudhol became strained for various reasons and the Plaintiff incurred his displeasure. As a result thereof, as mentioned in the order No.1111/28-3-1930 all the properties of the Plaintiff including the suit lands were taken possession of and were managed by the Rajasahib of Mudhol as a trustee for and on behalf of the Plaintiff. The plaintiff submits that this order or any other order which may have been passed by the late Rajasahib of Mudhol have all been passed behind the back of the Plaintiff and without giving him any opportunity of putting forward his case. This order and all other orders that may have been passed, are all ultra vires and null and void. ~~xxxx~~ and are in no way binding on Plaintiff. The Rajasahib of Mudhol and his successors in title have throughout remained in possession of the suit lands as ~~xxxxxxxx~~ trustee and managers ~~xxx~~ for and on behalf of the Plaintiff.

9. The suit lands are not all watan lands or lands given for rendering service to the State as mentioned in the Mudhol Diwan Sahib's letter No.1111 dated 28-3-1930. The Plaintiff does not admit any of the allegations made in the ~~xxxx~~ said letter and he has no knowledge whatsoever of the alleged orders of the Rajasahib as mentioned therein. If at all such orders have been passed, they have been passed behind the back of the Plaintiff and his father and are in no way binding on them. Radhabai ~~xxx~~ had not been given the lands for any service and the so called State orders regarding service Inam lands cannot apply to the suit lands, which are ~~not~~ Rayatwa lands

even assuming that they were not Devatwa lands, they were of the ownership of the Plaintiff's family and it was the Plaintiff grand father who had gifted them to Tanibai as Dismistress.Hence there can be nothing illegal in the Plaintiff's further purchasing them back from Tanibai's daughter Radhebai in 1930 and the Rajasaheb and the Mudhol State are estopped from contesting title of the Plaintiff's family to the suit lands.

The allegations contained in this paragraph are not true.

10. From 1930 till the merger of the State the Plaintiff made several applications to the Mudhol Rajasahib and Resident Kolhapur and Deccan States requesting to put over to him the possession of the suit properties. The Resident of Kolhapur and the Deccan by His No.J-149/38,dated 12th March 1940 replied that the matter was under consideration and thereby his order dated 29th June 1940 declined to interfere in the matter in respect of the lands Survey Nos.183,185, and 17 that is the two suit lands and another one Even thereafter the Plaintiff went on making requests to the H.H.Rajasaheb of Mudhol and the said Resident, to restore possession of the suit lands. As there was no provision for filing suit against the Rajasahib of Mudhol or against Mudhol State, before the merger of State, the Plaintiff could not file a Civil Suit. After the merger the plaintiff sent detailed petitions praying for proper reliefs to the Govt.of Bombay Political & Services Dept.and Ministry of States of Govt of India, and Regional Commissioner for Kolhapur and Deccan States, Chief Administrator of Sangli and Administrator of Jath. Regional Commissioner sent a reply to the Plaintiff that his application was sent to the Govt.of Bombay for disposal.Chief Administrator and Administrator of Mudhol did nothing.Govt. Of India seems to have transferred the application to the Govt.of Bombay. Bombay.D.who sent reply to the Plaintiff on 24-12-1948 intimating that after careful consideration the Govt.has rejected the plaintiff's application. He also applied to the Collector,Sangli who transfered the application to the Prant Officer for disposal who ultimately decided it on 4-4-1951 and Plaintiff was informed of this through the Collector on 20-4-1951

11. The suit lands are in possession of the Defendant since after the merger of the Mudhol State with the Indian Union. As there was no provision for filing a civil suit against the Rajasahib of Mudhol or the Mudhol State before the merger of State the cause of action for this suit arose after merger of Mudhol State with the Indian Union on 8-9-1948, when the suit lands were taken in custody of by the Defendant along with the rest of the Mudhol State.

Suit is barred by limitation.

12. Valuation :- Suit being for possession of lands court fees on 7½ times the assessment i.e. Rs.427-8-0(assessment being Rs.57) are paid. The value of the lands for jurisdiction and pleaders fees is Rs.5000/-

13. As the lands are situate within the jurisdiction of this court, it has jurisdiction to try the suit.

14. Notice of suit as provided for by sec 80 C.P.C. has been given to the Defendant acknowledgement of which are produced herewith lists annexed

15. The plaintiff prays

i) that the suit lands be given into the possession of the Plaintiff as full owner thereof;

ii) That further mesne profits from date of suit onwards be awarded

iii) That cost of suit be awarded.

iv) and such other relief be granted as justice and equity require.

Plaintiff.

Verification.

Bijapur:

Dated :

Plaintiff

Filed on

Pleader.

2nd Addl. Munsiff Bijapur

Bijapur C.S. No.190/52 5-23

Plaintiff Hanmantrao Nana Saheb Ghorpade of Machakanur family (which is related to the Ruling House of the former Mudhol State) has filed this suit for possession of the suit lands, mesne profits from the date of the suit and costs.

2. Defence of this suit may be sanctioned on the lines of the accompanying brief.

16/2/53

Sdh (illegible) 17/2

Secretary R D 17/2

× M-3042 E
dt. 17-2-53.

No. 3190/E

Office of the
Remembrancer of Legal Affairs
Bombay Castle(Bombay No.1), 18th Feb. 1953.

Subject:- Bijapur Civil
Suit No. 190 of 1952

MEMORANDUM.

The District Government Pleader, Bijapur is informed that the defence of the suit noted above is sanctioned and he is requested to conduct the same on the lines of the brief, a typed copy of which is sent herewith in advance.

Papers of the case in seven file received from the Collector accompany.

for Remembrancer of Legal Affairs.

To

The District Government Pleader, Bijapur

KML/29.8

Submitted for signature
18/2/53

Issued
18/2

G.R. L.D. No. 9967/E Dated. 28/4/53
Has been sent to G.P. Press on
1st May 1953.

GM
1/5

337

No. 360 of 1953.
Date 4-3-1953.

To

The Remembrancer of Legal Affairs,
Secretariat, Bombay No.1.

Subject:- Bijapur Civil Suit No.190/1952.
1. Hanmantrao Nanasaheb Ghorpade.plf:
Vs.
1.The State of Bombay. deft.

Sir,

With reference to your No.3190/E of 18-2-1953, I have the honour to send herewith a draft of the Written Statement for favour of revision.

I have sent herewith the seven files and the draft of the written-statement through the Collector of Bijapur so that the Collector may forward the seven files and the written-statement to you with his own remarks.

2. It may please be noted that in para 2 of the written-statement I have stated that the village Machaknur and the lands therein including the suit land belonged to the Ruling Royal family of Mudhol proper, namely the Rajasaheb of Mudhol.

I have further stated therein that Maharao did not belong to the Ruling Royal family.

In para 3 of the written-statement I have stated that the plff and his ancestors belong to Machaknur family which is related to the ruling House of the former Mudhol State.

The geneology is to be found in file VI at page 37.

As regards the allegations in Paras 7 of the plaint, I have stated our contentions in paras 7 and 8 of the written statement.

The date fixed for putting in written - -statement is 25-3-1953.

Yours faithfully

Ahmad

Dist. Govt. Pleader, Bijapur

Respectfully forwarded through theCollector of Bijapur with the draft of the Written-statement and the Seven Files.

Ahmad

District Government Pleader,
Bijapur.

11 54

IN THE COURT OF THE CIVIL JUDGE, SENIOR DIVISION,
AT BIJAPUR.

Bijapur Civil Suit No.190/1952.

1. Hanmantrao Ghorpade..... Plaintiff.

Vs.

1. The State of Bombay. ... Defendant.

Herein the Written-Statement of the defendant is as follows:-

(1). The defendant does not admit the plaintiff's claim.

(2). The village Machaknur and the lands therein including the suit lands belonged to the Ruling Royal family of Mudhol proper namely the Rajasaheb of Mudhol. An annual cash allowance of Rs. 5000/-(equivalant to Rs.4687-8-0 in British coins) was made in 1820 by the then Rajasaheb of Mudhol to Maharao, the ancestor of Machaknur Family.The said Maharao did not belong to the Ruling Royal Family. Subsequently it was arranged between the parties that the village Machaknur should be given by the Rajasaheb to Shri Maharao on lease in lieu of Rs.800/- and the amount of Rs.800/- should be deducted from the cash grant. Maharrao died in 1831 leaving behind him his son Govindrao alias Babasaheb who died in 1872 leaving behind him threex sons.There were thus subsequen--tly three branches of the Machaknur family and they wanted the cash allowance to be partitioned among them. In 1906, the then Ruler of Mudhol accordingly partitioned the cash allowance.The village of Machaknur granted on lease was taken away from the family and the Rajasaheb ordered that the lands unauthorised alienated during the period of lease should be continued during the life time of the holders and after their ~~the~~ deaths due inquiry should be made in thematter. Thex assessment of

the suit lands was being debited to Khasgi & Sheri department and in the year 1906-1907, the lands were transferred to the Hedd " Huzur Noukari". On 4-10-1929, the Rajasaheb of Mudhol passed an order directing that the suit lands ~~xx~~ be ~~resciended~~ resumed as they were in unauthorised possession of the plaintiff contrary to State Rules. The lands were accordingly ~~resciended~~ resumed by the Rajasaheb. The plaintiff submitted ~~to~~ memorial to the Dewan of Mudhol on 9-11-1929 requesting restoration of the suit lands to him. The request was rejected on 28-3-1930 under an order of the Rajasaheb.

(3). The allegations in Paras 2 and 4 and 5 of the plaint that the suit lands are the ancestral lands of plff's family, that they are of their ownership for years in the past, and that they were Rayatawari lands ~~xxx~~ are denied. The meaning of the word " Seri" as given in ~~parax~~ para 1 of the plaint is not correct. The word Sheri would even show that the lands belong to the Ruling Royal Family of Mudhol proper. The plff and his ancestors belong to Machaknur family which is related to the Ruling House of the former Mudhol State. The plff's allegation in the last sentence in para 2 of his plaint is not admitted.

(4). The allegation in Para 3 of the plaint that Shree Govindrao was in possession of the suit lands as full onwer is not correct and is denied. He was not full owner of the suit lands and consequently he was not authorised and had no power to alienate the lands by way of gift to his mistress Tanibai. Tanibai and after her death her daughter thus were no owners of the lands. The allegation in para 4 of the plaint that the properties were inherited by Radhabai is not correct.

(5). Radhabai's Possession and enjoyment were unauthorised. The allegations in Para 5 of the plaint that the suit lands were Raitawari and that Radhabai took

13

possession of the lands as full owner are not correct and are denied.

(6). Radhabai had no valid title to or ~~x~~ legal possession of the lands and therefore the plff's father got no title and legal possession of the lands.

(7). The plff's father diod in 1914 after his death properties had been taken under State management as the plff Hanmantrao was a minor and ~~where he comes~~ when he came of age in 1927 ~~it was~~ they were handed over to him. The allegations in para 7 of the plaint which are inconsistent with what is stated above are not admitted.

(8). On 16-1-1915, the Rajasaheb ordered that possession of suit land with the plff should not be distrurbed during the life time of Radhabai.It seems that through oversight no action was taken in the matter immediately after her death.However the matter was finall lecided in 1929 and the lands were resumed.

(9). The allegations in Para 8 of the plaint (beginning with the word unfortunately and ending with the words plaintiff and again beginning with the words the " Suit lands and ending with the words suit lands") are not correct and are denied.

(10). The lands were resumed by the Rajasaheb finally in accordance with the order dated 4-10-1929.That order was final, legal and proper and was passed after due enquiry.The possession of the suit lands thus taken was not that of a trustee of the plaintiff.He assumed possession as owner.The allegation of the plaintiff in para 8 of the plaint that the Rajasaheb of Mudhol and his successors in title have through out remained in possession of the suit lands as trustees and managers for and on behalf of the plaintiff is not true.

(11). The allegations in Para 11 of the plaint that

the cause of action for this suit arose after the merger of the Mudhol on 8-3-1948 is not correct and is denied.

(12). The plaintiff is not entitled to any of the reliefs prayed for by him.

(13). The order of resumption was passed by the then Rajasaheb of Mudhol on 4-10-1929 quite a long time before the merger and the plff has no cause of action against this defendant. Matters decided by the former Ruler of Muhol cannot be allowed to be reopened after the merger of the State.

(14). The plaintiff states in his plaint that there was no provision for filing suits against the Rajasaheb of Mudhol or against the Mudhol State and that the plff could not file a suit. The plff therefore cannot claim a right to file a suit against this defendant when he had no such right to file a suit in the matter during the State regime. The allegation in Para 11 of the plaint that the cause of action for this suit arose after the merger of Mudhol State on 8-3-1948 is not correct and is denied, ~~as being true.~~

(15). The plff's suit is not in time.

(16). The plff cannot get the reliefs prayed for by him unless the order of resumption passed on 4-10-1929 by the then Rajasaheb of Mudhol is set aside. The plff has filed this suit on 28-6-1952 after expiration of one year from 28-7-1948 when the Indian States(Application of Laws) order 1948 came into force in that State with effect from 28-7-1948. The plff's suit is thus barred by limitation under Article 14 of the Indian Limitation Act.

The defendant submits that plaintiff's suit be dismissed with costs.

District Government Pleader,
Bidar. P.T.O.

15

I, A.C.Angadi, B.A,LL.B., District Government Pleader Bijapur hereby declare that what is stated in paras 1 to 16 above is true on information received and believed to be true. Signed in Bijapur on _____

District Government Pleader,Bijapur.

Submitted

Defence of this suit was handed
on exhaustive brief is prepared
(Ship J.)

Draft W.S as shyhtly amended
appears like in order

Please see D.G.P. letter at
Ship A all the points mentioned
therein are covered by the
brief.

It was not necessary for D.G.P
to send all the papers along with
W.S when offence was already
sanctioned.

MU
17/3/53

Sd (illegible) 17/3

ISSUES. Spl.C.S.No.190 of 1952.

(1) Whether the present suit is not tenable against the defendant in view of the fact that the defendant is the successor-in-title of the Mudhol State ?

(2) Whether Radhabai was the daughter of Tanibai and was entitled to succeed to Tanibai's estate and that Tanibai was the owner of the suit properties ?

(3) Whether the plaintiff proves that he is the owner of the suit properties ?

(4) Whether the suit is in time ?

(5) Whether the suit is barred under Art.14 of the Indian Limitation Act ?

(6) Whether the plff is entitled to the possession and mesne profits claimed ?

(7) What decree ?

20-6-1953. Civil Judge, Sr.Dn.

Suits :

Bijapur.

For possession of the suit lands, mesne profits from the date of the suit and costs.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 9967/E.

Bombay Castle, 28th April 1953.

Letter from the Collector of Bijapur No. LAW. 213, dated the 10th October 1952—

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BIJAPUR.

Civil Suit No. 190 of 1952.

Hanmantrao Nanasaheb Ghorpade ... ... Plaintiff;

versus

The State of Bombay Defendant.

Forwarding the papers in the suit noted in the margin; and requesting sanction to its defence.

Memorandum to the District Government Pleader, Bijapur, No. 3190/E, dated the 13th February 1953—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order and in the name of the Governor of Bombay,

J. R. DHURANDHAR,
Secretary to Government.

A Leg. H 26—1

[P.T.O.

To

* The Revenue Department,
* The Collector of Bijapur,
The District Government Pleader, Bijapur (with two copies of the brief).

With a copy of the brief.

No. of 1953.

Copy forwarded for information and guidance to

Subdl - after ...
file no 5 - Bijapur/53 (Rev)
3/10/53
5. 5. Del
3/10

21 37

BIJAPUR CIVIL SUIT No. 190 OF 1952.

Chronological Statement of Facts.

Plaintiff- Hanmantrao Nana Saheb Ghorpade of Machakanur family (which is related to the Ruling House of the former Mudhol State) has filed this suit for possession of the suit lands, mesne profits from the date of the suit and costs.

2. A note dated 25th February 1940, prepared by the Dewan of Mudhol (*vide* file VI, pp. 21-37) gives the history of the Machakanur family, a geneological tree showing the relation between the two families and also information about the cash grant and lease of the village Machakanur made in its favour. It will be seen from the note that an annual cash allowance of Rs. 5,000 (Pirkhani equivalent to Rs. 4,687-8-0 in British coin) was made in 1920 by the then Raja Saheb of Mudhol to Maharao the ancestor of the Machakanur family. Subsequently it was arranged between the parties that the village Machakanur should be given to Shri Maharao on lease in lieu of Rs. 800 and the amount of Rs. 800 should be deducted from the cash grant. There were subsequently three branches of the Machakanur family and they wanted the cash allowance to be partitioned among them. In 1906, the then Ruler of Mudhol accordingly partitioned the cash allowance. The village of Machakanur granted on lease till then was taken away from the family in that year and the revenue of the village has been credited to the Mudhol State Treasury from that year.

3. In 1906 at the time of the partition of the cash grant of the Machakanur family the Raja Saheb of Mudhol found that unauthorised alienations of certain lands had been made by the members of the Machakanur family during the time that the said village was with them on lease. The Raja Saheb then ordered that the lands thus alienated should be continued during the life-time of the holders and that after their deaths due enquiry should be made in the matter.

4. Suit lands Revision Survey Nos. 183 and 185 measuring respectively 26 acres 13 gunthas and 20 acres and 13 gunthas, situate in Machakanur Village, were given as a gift on 17th November 1864 by Shri Govindrao the plaintiff's grand-father to his mistress Shrimati Tanibai. After the death of Tanibai, her daughter Radhabai came in possession of the suit land. In 1909, Shrimati Radhabai sold the suit lands to Shri Parawatarao, the plaintiff's father. Radhabai died in 1918.

5. Mudhol State record shows that the assessment of the suit lands was being debited to Khasgi or Sheri Department. In the year 1906-07, the lands were transferred to the head "Huzur Nokari".

On 4th October 1929, the then Raja Saheb of Mudhol passed an order directing that the suit lands Revision Survey Nos. 183 and 195 should be resumed as they

were in unauthorised possession of Shri Hanmantrao, the plaintiff. The plaintiff submitted a memorial to the Dewan of Mudhol on 9th November 1929 requesting restoration of the suit lands to him. The request was rejected on 28th March 1930 under an order of the Raja Saheb.

6. The plaintiff submitted a petition on 5th December 1938, to the Resident of Kolhapur and the Deccan State. On 29th June 1940 he was informed that the Resident had declined to interfere in the matter.

7. It should also be noted in this connection that one Avanyabai said to be a daughter of Radhabai also applied to the State Inam Commissioners in 1942 for restoring the said lands to her as heir of Radhabai. But her application was rejected on 15th April 1947 by the Regent Rani Saheb of Mudhol.

8. After the merger of the Mudhol State the matter was again agitated before the Chief Administrator and the Collector separately by the heirs of Shrimati Radhabai as well as by the plaintiff. The plaintiff finally submitted an application to the Collector on 3rd February 1951 for restoration of the suit lands to him; the application was rejected on 20th April 1951, as the matter had been finally decided by the late Mudhol State long before the merger.

9. Plaintiff seems to have given a notice of suit on 12th February 1952 and filed this suit on 28th June 1952.

10. The plaintiff's contentions are briefly stated below:—

(1) The suit lands are the ancestral lands of the family and are of its ownership.

(2) The suit lands were gifted to Tanibai by his grand-father Govindrao Radhabai the daughter of Tanibai as sole heir inherited the suit lands as full owner since they were Rayatwa lands. Plaintiff's father purchased the said lands from Radhabai in 1909 and he was in possession and making wahivat of the suit lands till 1915.

(3) As a result of strained relation between him and the Raja Saheb the latter under his order dated 28th March 1930 took possession of the plaintiff's lands which included the suit lands. The said order was passed by the Raja Saheb *ex parte* without giving the plaintiff any opportunity to be heard.

(4) The said order or any such other orders passed by him were *ultra vires* and null and void.

(5) The Raja Saheb was in possession of the suit lands as a trustee of the plaintiff.

(6) The suit lands were not watan lands. Even assuming that they were not Rayatawa lands they were of the ownership of the plaintiff's family, and the plaintiff's grand-father had gifted them to his mistress Tanibai. There was nothing illegal therefore in plaintiff's purchasing them from the daughter of Tanibai.

11. The plaintiff prays—

(1) for possession of the suit lands as full owner thereof;

(2) for mesne profits from the date of the suit; and

(3) for costs.

Grounds of Defence.

Want of cause of action.—The plaintiff has no cause of action against this defendant. The order of resumption of the suit lands was passed by the then Raja Saheb of Mudhol on 4th October 1929. His request for restoration of the lands to him was also rejected under the orders of Raja Saheb on 28th March 1930. The plaintiff also addressed petitions to the Resident of Kolhapur and the Deccan State, about the suit lands and other lands. The Resident also declined to interfere in the matter. Though the plaintiff kept on making petitions thereafter both during the State regime and after merger; the fact remains that the matter was finally decided by the Raja Saheb in 1929 quite a long time before merger and the plaintiff has no cause of action against this defendant. Matters decided by the former Ruler of Mudhol cannot be allowed to be reopened after the merger of the State. Any rights which the plaintiff may have against the Mudhol State cannot be enforced against the successor Government.

2. *Bar of suit.*—In paragraphs 10 and 11 of the plaint plaintiff states that there was no provision for filing a suit against the Raja Saheb of Mudhol or against the Mudhol State, before the merger of that State and therefore plaintiff could not file civil suit. Plaintiff cannot therefore claim a right to file a suit against this Defendant which is a successor Government when he had no such right to file a suit in the matter during the State regime.

3. *Limitation.*—The District Government Pleader is requested to ascertain from the Collector whether any limitation Act was in force in the late Mudhol State and what was the period of limitation for filing a suit for possession of land. The Mudhol State integrated on 8th March 1948; and the Indian States (Application of Laws) Order, 1948, came into force in that State with effect from 28th July 1948. Plaintiff cannot get the reliefs prayed for unless the order of resumption of the suit land passed on 4th October 1929, by the Raja Saheb of Mudhol is set aside. Plaintiff contends that he had no right to file a suit against the Raja Saheb of the late Mudhol State before the integration of that State. Assuming such right became vested in the plaintiff as the subject of the late Mudhol State for the first time on 28th July 1948 when the Indian States (Application of Laws) Order, 1948, came into force in that State, it was open to the plaintiff to file a suit for the purpose within one year from 28th July 1948. Plaintiff failed to do so and filed this suit on 28th June 1952 a long time after expiration of one year from 28th July 1948. The suit is therefore barred by limitation under Article 14 of the Limitation Act.

4. The first contention of the plaintiff is that the suit lands are his ancestral property belonging to his family. This contention is not true and should be denied. It should be urged that what was granted to Shri Maharao, the founder of the Machakanur family, was the cash grant of Rs. 5,000 Pirkhani. The village was leased to him and its revenue of Rs. 800 was deducted from the grant. The plaintiff's ancestors were not therefore the owners of the suit lands or any other lands in the village.

5. Mudhol State records show that the assessment of the lands in the village including the suit lands was being debited to Khasgi or Sheri Department till 1905-1906 and in 1906-1907 the said lands were transferred to the head "Huzur Nokari". The plaintiff's contention therefore that the suit lands are and always were Rayatwa is not true and should be denied. The plaintiff suggests that the word "Sheri" means lands in possession and enjoyment of the family of the prince. Plaintiff thereby wants to contend that since he is the member of the Royal Family the said lands are of the plaintiff's ownership. In the first place it should be denied that the word "Sheri" has any such meaning. Even assuming it has such a meaning, it should be urged that the word shows that the lands belong to the Ruling Royal Family of Mudhol proper and not to the Machakanur family who were simply granted a cash allowance as a matter of favour voluntarily by the then Raja Saheb. The Machakanur family had at no time any claim to any such lands in the village and the cash grant was also purely a voluntary grant made at the discretion of the Raja Saheb.

6. Averments in paragraph 3 of the plaint are true with the reservation that Govindrao was not the full owner of the suit lands and consequently he was not authorised to alienate them by way of gift to his mistress Tanibai in 1864.

7. It is contended in paragraph 5 that the lands were Rayatwa and Radhabai, the sole heir of Tanibai took possession of the suit lands as full owner and enjoyed them up to 1909. This contention is not true. Alienation made in 1864 of the suit lands in favour of Tanibai was unauthorised. Consequently Radhabai's possession and enjoyment was also unauthorised. The fact about such unauthorised alienation made by the Machakanur family had come to the notice of Raja Saheb at the time of partition of 1906 when the lease of the village Machakanur was terminated. The Raja Saheb thereupon ordered an enquiry into such alienations made by the Machakanur-Kars. As a result of that enquiry, order of resumption of the suit lands was passed by the Raja Saheb on 4th October 1929. The order of resumption was final and conclusive.

8. It is averred in paragraph 6 that the plaintiff's father purchased the suit lands on 30th June 1909 from Shrimati Radhabai for Rs. 1,500 and was in possession and enjoyment of the suit lands till his death in 1915. If the plaintiff wants to suggest thereby that his father's title to the suit land was legal, the suggestion should be denied. Shrimati Radhabai had herself no valid title or legal possession of the suit lands. She could not therefore give a better title to the plaintiff's father than what she had. Her possession was not disturbed because an enquiry was being made into the unauthorised alienation of the suit lands. On 16th January 1915, the Raja Saheb ordered that possession of suit land with the plaintiff should not be disturbed during the life-time of Radhabai. Radhabai died in 1918. It seems that through oversight no action was taken in the matter immediately after her death. However in 1929 the matter was finally decided and the lands were resumed.

9. Plaintiff avers in paragraph 8 that in the beginning of 1930 the relation between the plaintiff and

Raja Saheb were estranged and Raja Saheb ordered that possession of suit lands and other lands of the plaintiff should be taken over. Plaintiff contends that the said order or orders passed by the Raja Saheb being *ex parte* were *ultra vires* null and void. Plaintiff also contends that possession of suit lands by Raja Saheb was that of a trustee of the plaintiff. All these contentions are not true, and should be denied. The lands were ordered to be resumed by the Raja Saheb finally on 4th October 1929, as the said land were unauthorisedly alienated and as the lands were in possession of the plaintiff, contrary to State Rules. Moreover in 1906-1907 the lands had been transferred to the Head "Huzur Nokari". Since no service was performed they were rightly resumed. Whatever may be the grounds for or Rules under which the suit lands were resumed, the Raja Saheb as a sovereign Ruler of Mudhol passed the order of resumption in 1929. No appeal or suit lay to any authority or Court against such an order of the Raja Saheb. The Raja Saheb's order was final and was passed after due enquiry. It was therefore quite legal and proper. Moreover the order was explicit and it was ordered that the suit lands should be resumed and thenceforward leased out annually. Possession of the suit lands thus taken by the Raja Saheb was not that of a trustee, of the plaintiff. He assumed possession as owner. In this connection it is necessary to refer to an important ruling given by the then Resident at Kolhapur in 1894. As the three branches of Machakanur family had asked the then Raja Saheb for partitioning the cash grant, the Raja Saheb referred the matter to the Resident as an independent tribunal. The resident held as follows : "This does not appear to be a case in which the Agency could interfere. The grant made to the family (Machakanur) is one to which no claim can be laid by them and is entirely voluntary on the part of the Chief of Mudhol. Any way in which he decides to partition the grant must be accepted by them". (*Vide* Dewan's note, File VI, p. 25.) As shown above the Raja Saheb partitioned the grant and terminated the lease of the village and also ordered that an enquiry should be made into the unauthorised alienation made by the members of the Machakanur family. Subsequently after due enquiry, he passed the order of resumption of the suit lands on 4th October 1929. The order was quite legal and cannot be challenged by the plaintiff. There was no fiduciary relation of any kind between the Raja Saheb and the plaintiff as regards the suit lands or any other property.

10. Averment and allegations in paragraph 9 are mere repetitions. However they are not true and should be denied. It is contended therein that the suit lands are not watan lands or lands given for service. As shown in paragraph 5 above, prior to 1905-1906 the said lands were shown in the State records as "Khasgi or Sheri" lands and in 1906-1907 the said lands were transferred to the Head "Huzur Nokari". As a sovereign Ruler of the Mudhol State the Raja Saheb could transfer the lands from one head to another. Apart from the fact whether they were Khasgi or Nokari, the plaintiff's family had nothing to do with the said lands. They were mere lessees of the village and were not authorised to alienate any lands in the village

whatsoever. The plaintiff's grand-father was not also authorised to make a gift of the suit lands to his mistress Tanibai. The fact about the alienation thus made by him were noticed in 1906 at the time termination of the lease. Raja Saheb directed an enquiry into the matter and ordered resumption of the lands. Similarly Tanibai's daughter Radhabai had no right or title to sell the said lands to plaintiff's father. She had also not obtained previous consent of the Raja Saheb for alienating the suit lands. The sale transaction, therefore, in favour of plaintiff's father was quite unauthorised and null and void *ab initio* as against the Mudhol State.

11. For all the reasons it should be urged that the suit fails and should be dismissed with costs.

27

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION)

AT BIJAPUR.

REGULAR Civil Suit No. 190 of 1952.

Pleaders

Shri A.V. Alkut.

(1). Hanamantrao Nanasahib Ghorpade, Machaknurkar residing at Rajarampuri 9th Lane, Kolhapur. PLAINTIFF

against

Shri A.G. Angadi Govt. Pl.

(1). The State of Bombay. DEFENDANT

Claim:- Rs. 427-8-0 for court-fees and Rs. 5000/- for pleaders fees and jurisdiction.

1. The plaintiff sues to recover possession of the suit lands and to recover costs and future mesne profits.

2. The facts of the case are as follows: The R.S. No. 183 and R.S. No. 185 situated at Machaknur, taluka Mudhol are the ancestral lands of plaintiff's family and they are Raiyatwar lands, but described as Seri lands. The meaning of the Sri lands would be that the lands were belonging to the Royal family of the princes; and the plaintiff and his ancestors belonged to the Royal family of the Rajasaheb of Mudhol. The grand father of the plaintiff Raja Govindarao made a gift of these lands in favour of one Tanibai, his mistress, some-where in the year 1860. Tanibai made

enjoyment of these lands as owner till her death, which occured in 1880. As Tanibai had no male issue, her daughter Radhabai inherited those lands as the heir to her mother. But on 30-6-1909 the said Radhabai sold those lands to the plaintiff's father for Rs. 1500/- and he took possession of them and made wahiwat of them till his death which occured in 1966. At the date of the death of the plaintiff's father, the plaintiff was a minor and the late Rajasaheb of Mudhol, H.H. Raja Malojirao took possession of all the property of the plaintiff including the suit lands in the capacity of a guardian or a trustee of the minor plaintiff and made wahiwat of them through the Mudhol Darbar on behalf of the plaintiff. In 1927, the plaintiff attained majority. The said Malojirao passed the order on 25-1-1927 for handing over possession of by the plaintiff in that year.

3. In the beginning of the year 1930, the relationship between the plaintiff and the Rajasaheb of Mudhol became strained for various reasons and the plaintiff thus incurred the displeasure of the Rajasaheb. As a result, Rajasaheb passed the order No. 1111 dated 28-3-1930 and all the properties of the plaintiff including the suit lands were taken possession of by the Rajasaheb. But the said order had been passed behind the back of the plaintiff and was ultra-vires, null and void. From the date of order, the suit lands were remaining in possession of the said Rajasaheb and his successors as trustees for and on behalf of the plaintiff. The Plaintiff made a number of applications to the State Authorities, Rajasaheb etc, but he could not succeed in getting back the lands. He ultimately approached the Resident (of the Political Agent of the Decan States) complaining against the order of Rajasaheb, but the plaintiff did not succeed there also. The Resident sent the reply to the plaintiff

on 29-6-1940, declaning to interfere with the decision of the Rajasaheb.

4. As there were no provisions in the Mudhol State filing the suit against the Rajasaheb of Mudhol or against the Mudhol State, before the merger of the said State into the Bombay State, the plaintiff count not file the suit. The State was merged into the Bombay Province in the year 1948. The plaintiff then approached the Government of Bombay to redress the grievances, but the Bombay Government also replied to the plaintiff on 24-12-1948, intimating that the plaintiff's application could not be granted. The suit lands are now in possession of the Bombay State, the defendant, from the date of the merger and the suit was, therefore, filed to recover possession of the suit lands by serving notice under section 80 of the Ci vil Procedure Code. The cause of action of the suit arose after the merger of Mudhol State into Indian Union (i.e. on 8-3-1948).

5. The defendant in its written statement Ex. 12 contended inter-alia that the present suit was not tenable against the defendant as the plaintiff lost his right to file the suit against the Rajasaheb of Mudhol before merger and as the defendant has stepped into the shoes of the said Rajasaheb. It denied plaintiff's title to the suit property and also fof Radhabai and Taniabi. It contended that the suit was time-barred and also barred under Article 14 of the Indian Limitation Act. It challenged the plaintiff's right to claim possession or mesne p rofits. It prayed for its costs.

6. The following issues were framed at Ex. 15:-

(1) Whether the present suit is not tenable against the defendant in view of the fact that the defendant is the successor-in-title of the Mudhol State?

2. Whether Radhabai was the daughter of Tanibai and was entitled to succeed to Tanibai's estate and that Tanibai was the owner of the suit properties?

3. Whether the plaintiff proves that he is the owner of the suit properties?

4. Whether the suit is in time?

5. Whether the suit is barred under Article 14 of the Indian Limitation Act?

6. Whether the plaintiff is entitled to the possession sought and mesne profits claimed?

7. What decree?

7. My findings on issues Nos:

(1) It is tenable

(2) Yes.

(3) Yes, he was

(4) No.

(5) No.

(6) No.

(7) As per final order

R e a s o n s:

8. Issues Nos. 2 and 3:- The plaintiff alleges that the suit lands originally belonged to his ancestors and that his grand-father had made a gift of them to his mistress, Tanibai. He further alleges that Tanibai's daughter Radhabai succeeded to these lands in 1880 after the death of her mother and that she sold them to the plaintiff's father in the year 1909. The learned Government pleader argued that it was a duty of the plaintiff to prove that Tanibai and Radhabai were the owners of the suit lands; but it is not necessary for me in this suit to enter into the ancient history of these lands in view of the facts which will be

31

stated presently. It is clear from Ex. 39 that Radhabai sold the suit lands to the plaintiff's father in the year 1909. These lands were enjoyed by plaintiff's father till his death (i.e. from the year 1909 to 1916). In 1916, according to law, the plaintiff was the heir to his father and he inherited all his father's properties including the suit lands. At that time, the plaintiff was minor and the Mudhol State took possession of the plaintiff's property in the capacity of guardian as the plaintiff ~~exx~~ probably heppened to belong to Royal family. In the year 1927, the plaintiff attained majority and the Rajasaheb of the Mudhol State handed over possession of all the properties of the plaintiff to the plaintiff, Ex. 48 Exs. ~~29~~ ~~52~~ 50 also corroborate the said order, Ex. 48. It can also be seen from Exs . 5,55 and 52 that Radhabai was the owner the suit lands. When Rajasaheb took possession of the suit properties in the year 1916 as the guardian of the plaintiff, recognising him as the owner of the suit properties and when he (i.e. Rajasaheb) returned them to the plaintiff in the year 1927, there is no point in denying the title of the plaintiff to the suit lands up to the year 1927 or that of resumption. The defendant is the successor in title of the Mudhol State and it must recognise the rights which the ~~them~~ Rajasaheb did. I thus, instead of discussing further on the point, I record my findings on issues Nos. 2 and 3 in favour of the plaintiff.

9. Issues Nos. 1, 4 to 6:- The learned Government pleader contended that the defendant passed the order Ex. 45 finally on 28-12-1948, that the suit ought to have been filed within 1 year from that date to recover possession of the suit properties and that the suit was, therefore, barred under article 14 of the Indian Limitation Act. But I am not much concerned about the said order, Ex. 45. The plaintiff had tried his luck from the year 1930 to the date of the merger to get back possession of

the suit lands by applying to the Rajasaheb, Digan, Resident etc. and he had failed in his attempts to get relief from any one of them. After the merger, the plaintiff made a similiar application to the defendant also, but his request was not granted. The order Ex. 45 is not a specific order passed against the plaintiff for the first time. I, therefore, do not think that the order Ex. 45 is one referred under Article 14 of the Indian Limitation Act. If the learned Government pleader had stated that the suit ought to have been filed within 1 year from the date of the order of the Revenue Commissioner Ex. 57 or of Rajasaheb Ex. 55, there was some point for consideration. The plaintiff considers the order, passed by the Rajasaheb and his subordinate as one which is ultra-vires, null and void; and he also stated that the Rajasaheb of Mudhol was a private party who was interested to defeat the claim of the plaintiff. It is noted that there was no dispute between two rivals and that no order in the dispute of two rivals has been passed by the Rajasaheb. The Rajasaheb and his of ficers resumed the suit lands and took possession of them from the plaintiff. The plaintiff has, therefore, to seek his remedy against the Rajasaheb in Court of law within the time prescribed by the Indian Limitation Act. as the plaintiff considers the said orders as null and void. In the circumstances, I hold that Article 14 of the Indian Limitation Act is not applicable in the present suit at all and that plaintiff can file the suit within 12 years from the date of the dispossession, under Article 42 of the Indian Limitation Act.

10. The important issue in the present case is issue No. 4. The learned pleader for the plaintiff argued firstly that section 80 and Order XXXXXX XXVII of the Civil Procedure Code were not applicable in the MUdhol State and that the plaintiff could not, therefore, file the suit against the Rajasaheb to recover possession of the suit properties. He further argued that limitation started from the date of merger (i.e. 8-3-45), when the plaintiff

for the first time could file the suit against the Bombay State. His suggestion on the whole was that there was no remedy for him till 8-3-48 for filing the suit and that no question of limitation arose. Secondly he argued that the Resident (Political Agent was a final authority for the Deccan States, including the Mudhol State and that the Resident's order, Ex. 42 was the final order. He stated that the order of the Resident was passed on 29-6-1940 and the limitation should therefore be computed from that date under Article 142 of the Indian Limitation Act. There was no authority, cited by the learned pleader for the plaintiff to support any of his above mentioned views. It is admitted by the learned pleader for the plaintiff that Indian Limitation Act had been made applicable to the Mudhol State long before 1930. Moreover, it can be seen from Ex. 62, Appendix II that the Indian Limitation Act was in force in Mudhol State. It was admitted by the plaintiff that the Rajasaheb took possession of the suit lands in the year 1939-30 illegally; and under Article 142 of the Indian Limitation Act it was the duty of the plaintiff to file the suit within 12 years from the date of dispossession. It is true that section 80 and order XXVII of the Civil Procedure Code had not been made applicable to the Mudhol State. But it does not mean that the plaintiff was prevented from filing the suit against the Mudhol State under General Substantive Law. Section 80 of the Civil Procedure Code only requires that the suit should be filed by giving notice to the State or Government. Order XXVII of the Civil Procedure Code also refers to the mode of service of sunmmonses and notices to the Government Officers, kings or princes etc. In this order XXVII, there is nothing to show that the party was prevented from filing the suit against the State. Thus, non-applicability of Section 80 or Order XXVII of the Civil Procedure Code to the Mudhol State cannot prove that the plaintiff had no right to file the suit against the Mudhol State. It is also true that all Indian laws were

adopted to the merged States from July 1948 and on account of such adoptation no fresh cause of action for the suits can arise. ACcording to the Provisions of the Indian Limitation Act, suit has to be filed within 12 years from the date of dispossession and not f rom the date of adoptation of any law or from the date of the order of the Political Agent. Dispossession took place in the year 1929-30 and the limitation ran from ~~xx~~ that year for filing the suit to recover back the possession; and the limitation for such a remdy is 12 years under Article 142 of the Indian Limitation Act. The resident was not ~~xii~~ at all the appellate or revising authority of the Mudhol State. If the plaintiff made applications to the Resident with the hope of getting some help from him, the court cannot extended the period of limitation, prescribed under the Indian Limitation Act, on account of such an act of the plaintiff. I am thus unable to agree with any of the views of the learned pleader for the plaintiff in respect of limitation. The result is that the suit is not in time and the claintiff must fail in-toto. For these reasons, I record my findings on these issues accordingly and pass the following order.

O R D E R.

The plainiff's suit is dismissed with costs.

Sd/- M H Kazi.

the 15th February 1954. Civil Judge. Sr Dn.

DECREE.

In the Court of the Civil Judge, Sr.Dn.,

At Bijapur.

Civil Suit No. 190 of 1952.

1. Hanamantrao Nanasahib Ghorpade Machakurkar, age 50, Hindu, Occ. Land-lord and agriculture, residing at Rajarampuri, 9th Lane Kolhapur. Plaintiff.

Vs.

1. The State of Bombay. ... ... Defendant.

Claim Rs. 427/8 for Court fees and
Rs. 5000/- for Pleaders fees and
Jurisdiction.

Suit filed on 28-6-1952.
Suit registered on 5-7-1952.

The plaintiff begs to state as follows:-

1. This suit is for obtaining possession of the suit lands from the defendant and for other reliefs.

2. The suit properties are R.S.No. 183 measuring 26 acres and 13 gunthas assessed at Rs. 21-0-0 and R.S.No. 185 measuring 20 acres 36 gunthas at Rs. 36/- situated at Machaknur taluka Mudhol, District Bijapur. They are the ancestral lands of the plaintiff's family, having been of their ownership for years in the past. The suit lands are and always were Rayatawa lands and described as Seri Lands. The word "Seri" means lands in possession and enjoyment of the members belonging to the Royal family, namely the family of the Princes. The Plaintiff and his ancestors do belong to the Royal family of erstwhile Rajasahib of Mudhol

3. Raja Govindrao Maharao Ghorpade the paternal grand.father of the plaintiff who was in possession thereof as full owner, made a gift of the same in favour of one Tanibai who was Raja Govindrao's mistress

in about theyear 1860. Tanibai took possession of these lands by way of gift deeds made in her favour by Raja Govindrao Ghorpade. Tanibai enjoyed these properties till her death.

4. Raja Govindrao died in about 1872 and Tanibai died in about 1880. Tanibai had no malde issue but she had a daughter who was married to one Rangho Bagal Machaknur, taluka Mudhol. So the properties being Rayatawa, her --- daughter namely Radabai w/o Ragho Bagal of Machaknur inherited these lands after the death of Tanibai. She being the only heir to the deceased Tanibai under the Hindu Law, the properties were inherited by her and entered in her name in the Government records.

5. As the suit lands were Rayatawa, and as she was the only heir to the deceased Tanibai, Radabai took possession of the suit lands as full owner and enjoyed them upto 1909.

6. On 30-6-1909, Nanasahib Govindra Ghorpade, the father of the plaintiff purchased the suit lands by a registered document for Rs. 1500/- from the said Radhabai w/p Ragho Bagal, took possession of them and made wahiwat of these lands till his death which occured in 1915.

7. When Nanasahib Ghorpade died the present plaintiff was a monor. So the late Rajasahib of Mudhol, H.H. Raja Malojirao Venkatrao Ghorpade, being the guardian of the present plaintiff, took possession of all the properties of the plaintiff including the suit lands, as the Mudhol Darbar and managed them as guardian and trustee of the plaintiff and in no other capacity. Plaintiff attained majority in 1927 and by Order No 20 of 1927 dated 25-1-1927 of the said H.H. Raja Malojirao, all the properties of the plaintiff including the suit lands were handed over to the plaintiff. The order of Rajasahib Mudhol given in 1915, by which the plaintiff's properties were given into possession includes the suit lands.

37

8. Unfortunately, in the beginning of 1930, the relations between the plaintiff and the Rajasahib of Mudhol became strained for various reasons and the plaintiff incurred his displeasure. As a result thereof as mentioned in the order No. 111/28-3-1930 all the properties of the plaintiff including the suit lands, were taken possession of and managed by the Rajasahib of Mudhol as a trustee for and an behalf of the plaintiff. The plaintiff submits that this order or any other order which may have been passed by the late Rajasahib of Mudhol, have all been passed behin the back of the plaintiff and without giving him any opportunity of putting forward his case. This order and all other orders that may have been passed, are all ultra vires and null and void and are in no w ay binding on the plaintiff. The Rajasahib of Mudhol and his successors in title have throughout remained in possession of the suit lands as trustees and managers for an on behalf of the plaintiff.

9. The suit lands are not at all watan lands or lands given for rendering service to the State, as mentioned in the Mudhol Diwansaheb's latter, No 1111 dated 28-3-1930. The plaintiff does not admit any of the allegations made in the said letter and he was no knowledge whatever of the alleged orders of the Rajasahib as mentioned therein. If at all such orders have been passed, they have been passed behind the back of the plaintiff and his father and are in no way binding on them. Radhabai had not been given the lands for any service and the so called State orders regarding service ~~kk~~ Inam lands cannot apply to the suit lands, which are Rayatawa lands. Even assuming that they were not Rayatawa lands, they were of the ownership of the plaintiff's family and it was the plaintiff's grand father who had gifted them to Tanibai his mistress. Hence there can be nothing illegal in the plaintiff's father purchasing them back from Tanibai's daughter Radahaibai in 1930 and the Rajasahib

and the Mudhol State are estopped from contesting the title of the plaintiff's family to the suit lands.

10. From 1930 till the merger of the State the plaintiff made serveral applications to the Mudhol Rahasahib and Resident, Kolhapur and Deccan States requesting to hand over to him the possession of the suit prpperties. The Resident of Kolhapur and the Deccan States by his No. J-149/38, dated the 12th March 1940 replies that the matter was under consideration and then by his order dated 29 th June 1940 declined to interfere in the matter in respect of lands. S.Nos. 183, 185 and 175, that is the two suit lands and another one. Even thereafter the plaintiff went on making requests to the H.H. Rajasahib of Mudhol and the said Resident, to restore possession of the suit lands. As there was no provision for filing suits against the Rajasahib of Mudhol or against the Mudhol State, before the merger of State, the plaintiff could not file a Civil Suit. After the merger the plainiff sent detailed petitions praying for the proper reliefs to the Government of Bombay-Political and Services Department and Ministry of State of Government of India, and Regional Commissioner for Kolhapur and Deccan States,

Chief Administrator of Sangli and Administrator of Mudhol. Regional Commissioner sent a reply to the plaintiff that his application has been sent to the Government of Bombay for d isposal. Chief Administrator and Administrator of Mudhol did nothing. Government of India seems to have transferred ~~xxx~~ the application to the Government of Bombay Political and Services Department, who sent reply to the plaintiff on 24-12-1948 intimating that after careful consideration the Government has rejected the plaintiff's application. He also applied to the Collector, Bijapur, who transferred the application to tthe Prant Offi er for disposal, who ultimately decided it on 4-4-1951 and plaintiff was informed of this through the ~~Mamaldar~~

Mamalatdar on 20-4-1951.

11. The suit lands are in possession of the Defendant since after the merger of the Mudhol State with the Indian Union. As there was no provision for filing a Civil Suit against the Rajasahib of Mudhol or the Mudhol State before the merger of State the cause of action for this suit arose after merger of Mudhol State with the Indian Union on 8-3-1948, when the suit lands were taken custody of by the Defendant along with the rest of the Mudhol State.

12. Valuations:- Suit being for possession of lands court fees on 7½ times the assessment i.e. Rs. 427/8/- (assessment being Rs. 57/-) are paid. The value of the lands for jurisdiction and pleaders fees is Rs. 5000/-

13. As the lands are situated within the jurisdiction of this Court, it has jurisdiction to try the suit.

14. Notice of suit as provided for by Section 80 C.P.C. has been given to the defendant, the acknowledgements of which are proudced with the list annexed.

15. The plaintiff prays:-

(1) That the suit lands be given into the possession of the plaintiff as full owner thereof;

(ii) That future mesne profits from date of suit onwards be awarded;

(iii) That cdst of suit be awarded;

(iv) and such other relief be granted as justice and equity require.

This suit coming this day 15-2-1954 before Shri M.H. Kazi Civil Judge, Senior Division, in the present of Shri R.S. Chakrabhavi pleader for the plaintiff and Shri A.C. Angadi Government pleader for the defendant it is hereby ordered and decreed that the plaintiff's suit is dismisssed with costs;

Bill of Costs.

Plaintiff.			Defendant.		
		Rs.A.P.			Rs.A.P.
1.	Court fees.	40-5-0	1.	Vakalat	0-10-0
2.	Vakalat	0-10-0	2.	Stamps on Exhs.7,8,9, 10,11,20,23	4-6-0
3.	Stamps for Exhs. 3,5,14,17,19,22,25, 26,27,30,33,64 A	6-4-0	3.	Pleader's fees	237-8-0
4.	Pleader's fees.	237-8-0			
5.	Copying fee.	2-13-0			
6.	Process	4-6-0			
		310-4-0			242-8-0
	disallowed.			disallowed	
	on Exs.	6-4-0		on Exs,	4-6-0
	Total	304-4-0		Total	238-2-0

Given under my hand and seal of the Court this day 15th February 1954.

Prepared by,

Sd.B.K.Kop.

Clerk.

A.V.Albal

v.

A.C. Angadi

~~Typist.~~

~~Compared~~ by,

~~Typist~~.

(Seal of the Court)

Sd.M.H. Kazi,

Civil Judge, Sr.Dn.

Bijapur.

24-2-1954.

Sd.A.C.Angadi

"True Copy"

41 (105)

Suits:
Bijapur.
For possession of the suit lands, mesne profits from the date of the suit and costs.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 11320/E
Bombay Castle, 4th May 1954.

Read Government Resolution, Legal Department No.9967/E, dated the 28th April 1953.

Letter from the District Government Pleader, Bijapur

In the Court of the Civil Judge (Senior Division), Bijapur. Civil Suit No. 190 of 1952. Hanmantrao Nanasaheb Ghorpade..Plaintiff vs. The State of Bombay. ..... Defendant.	No. 195 dated the 15th February 1954

stating that the suit noted in the margin was decided by the Civil Judge (Senior Division), Bijapur on the 15th February 1954 when the following order was passed :-

" The Plaintiff's suit is dismissed with costs".

Letter from the District Government Pleader, Bijapur No. 224, dated the 19th February 1954, forwarding unertified copies of the judgment and decree.

RESOLUTION. The result of the suit is recorded.

By order and in the name of the Governor of Bombay,

R Katarki

(R.T. Katarki)
Deputy Secretary to Government.

To

The Revenue Department,
The Collector of Bijapur,
The District Government Pleader, Bijapur.

Issued one 4/5

BM.
1.5.

Submitted for signature
VK
2/5

SS (KD) 2/5 DS (Cancil)

106

File in S. Bijapur 6/53

do
7/5

S.A.S 2.3
7/5

S. Bijapur 6/53
8/5/54

8-4-1954. 43 109

Sd.M.K.Deshpande.
C.O.C. Exh.1.

Regular Appeal No.170 of 1954.

In the Court of the District Judge,at Bijapur.

1. Hanmantrao Nanasaheb Ghorpade,
age 50, residing at Machaknur,
Dist.Bijapur. ....Appellant.
(orig.plff).

vs.

1.The State of Bombay. ... Respondent.
(orig-deft).

Claim Rs 427-8-0 for Court fees.
Rs 5000/- for jurisdiction.

The appellant being aggrieved by the Judgment and decree of the Civil Judge,Sr.Dn.Bijapur, in Civil Suit No. 190/1952, begs to prefer this appeal on the following among other grounds.

1. The decree and Judgment are contrary to law and evidence.

2. Findings on issues Nos. 4,6 and 7 are erroneous.

3. The defendant has not made a case that the suit is barred under Article 14 due to the order Ex.45, and the Court ought not to have allowed the defendant to argue a case like that.

4. The lower Court ought to have held that the suit is within time.

5. The lower Court failed to see that the defendant had admitted that there was no provision to file a suit against the Maharaja of Mudhol or Mudhol State.

6. The lower Court failed to see that the allegations in the plaint that there was no provision to file a suit against the Rajesaheb of Mudhol or Mudhol State was never denied by the defendant but on the other hand defendant got raised issue No.1.

7. In this respect the lower Court has erred in giving a finding against the appellant in view of the admission of the defendant and more so in the absence of any issue on this point and the appellant is much prejudiced

8. It is an error to remark that authority was cited by

plaintiff on his propositions.

9. It is an error to say that the plff admitted that the Indian Limitation Act was made applicable to Mudhol State prior to 1930.

10. Ex.62. can at the most show that Limitation Act was in force in 1938 and not prior.

11. It is an error to say that Article 142 of the Limitation Act applied to the case.

12. It ought to have been held that there was no provision to file a suit in Mudhol State against the state or Rajesaheb and reasoning given in Para 10 of the Judgment are erroneous.

13. The lower Court failed to appriciate the contention that limitation could run against a subject when there is no provision to file a suit, against it.

14. The lower Court failed to see that stature of limitation was as much a procedural law as C.P. Code and as such both would run together.

15. It ought to have been held that merger of the State gave rise to a new cause of action for the plffs, as calculated from that day the suit is within time.

16. The lower Court failed to see that there was unless deft pleader 'taking of adverse possession' and proved it, no question would arise, and so also no question of the suit being barred by limitation would arise.

17. The lower Court failed to see that the Resident and Political Agent for Kolhapur and Deccan States was a superior Authority over the Mudhol Rajah and Mudhol State that he had appellate Revisional powers over both and that the State itself treated him as such.

18. It ought to have been held that the said Resident and PoliticalAgent was a superior Authority over Mudhol Rajah and Mudhol State and as such he had all powers to revise the orders passed by either.

19. It ought to have been held that limitation if at all would run from 29-6-1940 from date of order of Resident.

45

20. It ought to have been held that the suit is within time.

21. The lower Court erred in bot ordering the deft to produce documents as per notice of plff and the order passed on it is erroneous.

22. The lower court ought to have decreed the suit.

23. The proper issues are not framed and the lower Court approached the case from a wrong angle.

24. The order as to costs is erroneous.

It is therefore prayed that the appeal be allowed with costs and decree the suit of plff with costs.

Bijapur. Sd.A.V.Albal & N.K.Kulkarni.
8th April 1954. Advocate for appellant.

Note:-The Vakalat is filed in the lower Court and no fresh vakalat is filed.

Sd.A.V.Albal & N.K.Kulkarni.
Advocate for appellant.

Order.

Deficit court fee to be paid on 7th June 1954.

Order.

Admitted.Notice.

3-8-1954. Sd.N.S.Metrani.
Dist.Judge.

.....

43 43

Suits:
Bijapur.
For possession of the suit lands and Mesne profits from the date of the suit and costs.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 9134/E
Bombay Castle, 3rd May 1955.

Read Government Resolution, Legal Department No. 11320/E, dated the 4th May 1954.

In the Court of the Civil Judge (Senior Division), Bijapur. Civil Suit No. 190 of 1952. - Hanmantrao Nanasaheb Ghorpade...Plaintiff vs. The State of Bombay.....Defendant.	Letter from the Collector of Bijapur No. LAW-213, dated the 22nd April 1955 stating

that the plaintiff in the suit noted in the margin has filed C.A. No. 170 of 1954 in the District Court, Bijapur and requesting Government' sanction to the defence of the same.

RESOLUTION: Sanction is accorded to the defence of Civil Appeal No. 170 of 1954 in the Court of the District Judge at Bijapur on the lines of the brief accompanying Government Resolution, Legal Department No. 9967/E, dated the 28th April 1953 and the favourable grounds contained in the judgment of the Civil Judge, (Senior Division) Bijapur dated the 15th February 1954.

By order and in the name of the
Governor of Bombay,

2/5
D.P. Shikhare,
Original Deputy Secretary to Government.

To

The Revenue Department,

The Collector of Bijapur,

The District Government Pleader, Bijapur.

BM. Submitted for signature
25. 2/5
J.S. 2/5

DS Civils

Submitted after issue

Title in S. Bijapur 6/53

4/5

J.S 4/5

49

1544—8,000—3-54—N*

Civ. A 42 k.

ಅಪೀಲಿನೊಳಗಿನ ಹುಕುಮುನಾಮೆಯು (ಆರ್ಡರ ೪೧, ರೂ. ೩೫).

(ಫಾರ್ಮ ನಂಬರು ೯, ಪರಿಶಿಷ್ಟ ಗ, ಶಿಡ್ಯೂಲ ೧),

ಹುಕುಮನಾಮೆಯು

ತಾಲ್ಲೂಕು ಇಲ್ಲಿಯ ಸಿವಿಲ್ ಜಜ್ಜ ಕೋರ್ಟಿನಲ್ಲಿ.

ಮುಕ್ಕಾಮು ಬೆಳಗಾವಿ ಇಲ್ಲಿ ನಿ॥

ಕೊಡಲಿತ ಅಪೀಲ ಮೊಕದಮೆ ನಂಬರು ೧೭೦ ಸನ್ ೧೯೫೪ನೇ ಪೈಕಿ.

(೧) ಹಣಮಂತಗವ ನಾನಿ ನಿಳ್ಳಿ ಬ. ಪ್ರೌಢವತಿ ಕಂ ಯಾ. ನಿಲ್ಲು ಮಾಡಿರುವವರು ಫಿರ್ಯಾದಿ

ಆಪೀಲಂಟ (ಮೊದಲನೇ ಪ್ರತಿವಾದಿ)

ವಿರುದ್ಧ

೧. ನೀಲವ್ವ ತಂದೆ ಬಾಂಬೆ

ರಿಸ್ಪಾಂಡೆಂಟ (ಮೊದಲನೇ ಫಿರ್ಯಾದಿ)

ಬೆಳಗಾವಿ ಜಿಲ್ಲೆಯ ಸವದತ್ತಿ ತಾಲ್ಲೂಕಿನ ~~ನೇ ವರ್ಗ ಸಬ್~~ ಜಜ್ಜ ಕೋರ್ಟಿನ ಸನ್ ೧೯೫೩ ನೇ ಇಸವಿಯ ನಂಬರು ೧೫೯ನೇದರಲ್ಲಿ ತಾರೀಖು ೧೫ನೇ ಮೇ ತಿಂಗಳ ಸನ್ ೧೯೫೪ನೇ ಇಸವಿಯ ಹುಕುಮು ನಾಮಂಜರು ಮೇಲೆ ಸದರೀ ಆಪೀಲು ದಾಖಲ ಮಾಡೋಣದರಲ್ಲಿ ಬಂದಿರುತ್ತದೆ.

ಮೇಲೆ ಹೇಳಿದ, ಆಪೀಲಾಂಟ ಇವನು ಸದರಿ ತಾರೀಖಿನ ಹುಕುಮು ನಿಮಾಜುರು ಮೇಲೆ ಬೆಳಗಾವಿ ಇಲ್ಲಿಯ ಜಿಲ್ಲಾ ಕೋರ್ಟಿಗೆ ಆಪೀಲು ಮಾಡಿರುತ್ತಾನೆ.

ಈ ಆಪೀಲು ಸನ್ ೧೯೫೪ನೇ ನವೆಂಬರ ತಿಂಗಳಿನ ೨೪ನೇ ತಾರೀಖಿನ ದಿವಸ ಬೆಳಗಾವಿ ಜಿಲ್ಲಾ ಕೋರ್ಟಿನ ಮುಂದೆ, ಆಪೀಲೆಂಟನ ತರ್ಫಿನಿಂದ ವಕೀಲರು ಶ್ರೀ. ಆರ್. ಆರ್. ಭಾಲಭಾರ ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ * ರಿಸ್ಪಾಂಡೆಂಟನ ತರ್ಫಿನಿಂದ ವಕೀಲರು ಶ್ರೀ. ಎ. ಎಂ. ಅಂಗಡಿ ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ಸುನಾವಣೆಯ ಬಗ್ಗೆ ಬಂದಿದ್ದರ ಮೇಲಿಂದೆ ಹೀಗೆ ಹುಕುಮು ಮಾಡವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ—

ಅಪೀಲು ಅರ್ಜಿಯು ಡಿಸ್ಮಿಸ್ ಆಗಿದ್ದು ಕುರಿತು ನಮ್ಮ ಆದೇಶ ಇರುತ್ತದೆ.

53

In the Court of the Assistant Judge,

at Bijapur.

Civil Appeal No. 170 of 1954. from decree in Civil Suit No. 190 of 1952 of the Court of the Civil Judge, Sr.Dn. of Binaour(Shri M.H.Kazi).

Shri A.V.Albal. 1. Hanamantrao Nanasaheb Ghorpade, of Machaknur, District Bijapur. Appellant-plff.

vs.

Shri A.C.Angadi, Dist.Govt.Pleader. 1.The State of Bombay. Respondent-original Deft.

Claim Rs 427-8-0 for Court fees.
" Rs 5000/- for jurisdiction.

The only question that was argued for the plff--appellant is whether the suit is barred by limitation. The learned Judge has held that it is barred by limita--tion and has dismissed the suit with costs on 15th February 1954.

2. The property in dispute consists of two agricultura lands viz. R.S.Nos. 183 and 185 of Machaknur Taluka Mudhol.

3. The plff-appellant relied upon Ex.39 as his title deed with regard to the two lands. It purports to be a sale deed, dated 30-6-1909, by one Radhabai Kom Radhoba Bagal to the plff's father. He alleged that his grand--father Raja Govindrao who belonged to the family of the Raja of Mudhol was the absolute owner of the two lands. He alleged that Raja Govindrao made a gift of these two lands in favour of his mistress Tanibai in 1860 A.C., that Tanibai enjoyed possession until her death in 1880 C. leaving behind her daughter Radhabai who succeeded to these lands as heir of Tanibai and that Radhabai excecuted the sale-deed Ex.39 mentioned above. The plaintiff further alleged that his father enjoyed possession as owner till his death in 1916 when he was a minor. During his minority the Raja of Mudhol H.H. Raja Malojirao took possession as guardian and managed the plff's estate, including the suit lands. The Wahivant

was made through Mudhol Darbar. In 1927 the plff attained majority. On 27-11-1927 H.H. Malojirao passed an order handing over possession of the plff's estate, including the suit lands, to the plff. But subsequently on 28-3-1930 an order was passed by H.H.Malojirao and the plff was dispossessed and the Ruler took possession, The plff contended that the said order, dated 28-3-1930, was illegal, null and void. His applications to the Ruler and to the State authorities were turned down. The plff approached the Resident who on 29-6-1940 sent a reply to the plff declining to interfere with the decision of Rajesaheb.The plff alleged that in Mudhol State there was no provision by which he could have filed a suit either against the Ruler or against the State.So the plff explains that he could not file any suit. Then there was merger in the year 1948. So the plff approached the Govt of Bombay who sent a reply on 24-12-1948 that after careful consideration the application is rejected. The plff pleads that the two lands are now in the possession of the Bombay State and hence he filed the suit to recover possession after giving due notice under section 80 of the Civil Procedure Code. He pleads that the cause of action arose on 8-3-1948 when the merger took place.

4. The defendant filed W.S. Ex.12. The defendant has denied the plff's contention that there was no provision in the Mudhol State for filing a suit either against the Ruler or against the State. This allegation is made by the plff in para 9 of the plaint. By para 9 of the W.S. Ex.12 the allegations in para 9 of the plaint are denied.The deft further pleaded that Radhabai had no title which could be transferred to the plff. The deft pleaded that the suit is barred by limitation under Article 142 of the Indian Limitation Act and Article 14 of the Indian Limitation Act.

5. The learned Judge held that the plff has established his title, that the suit is tenable and that it is not barred under Article 14 of the Indian Limitation. But he held that the remedy was under Article 142 of the Indian Limitation Act and as that remedy was not undertaken the suit is barred by time.

S3

6. There is hardly anything to show that the plff could not have instituted a suit prior to merfer either against the Ruler or against the Mudhol State. Ex.62 is the Annual Administration Report for 1938-39. Appendix II shows that Indian Limitation Act No. IX of 1908 was made applicable to the State on 2-11-1915.It further shows that the Indian Civil Procedure Code with amendments was made applicable on 1-3-1915.But Section 80 and order XXVII were not made applicable to the State since 6-11-1927:This exclusion of section 80 and order XXVII since 6-11-1927 does not show that the plff could not have filed a suit for the reliefs either against the Ruler or against the State.It was argued that the Resident was the revising authority.But that is also not established.The plff may have approached the Resident. Therefore the Resident has to pass some order. Accordingly the Resident has passed an order informing the plff that he will not interfere with the decision taken by the Ruler. The mere fact that the Resident has passed an order after the plff's approach to him does not mean that the Resident was the revisin authority. It may be that if the Resident had thought of advising the Ruler or the State to hand over possession, then probably the Ruler or the State may have accepted that advice. But that does not mean that the Resident was the Revising authority who could compel the Ruler or the State to reverse his decision. I,therefore, cannothold that the plaintiff has establ--shed that he could not have filed any suit prior to merfer either against the Ruler or against the State. I also cannot hold that plff has proved that the Resident was the revising authority.

7. So the time began to run against the plff from 28-3-1930.This running of time cannot be sto simply because the Resident was approached by th

with the hope of getting some relief from him. So long prior to merger plff's title, if any, or right to possession of the two lands was extinguished. I must therefore hold that the suit is barred by time and has been properly dismissed on that account.

Order.

The appeal fails and is dismissed with costs.

14th September 1955. Sd.M.S.Parulkar.
Asstt.Judge.

.....

127
57

Suits:
Bijapur.
For possession of the suit lands, mesne profits from the date of the suit and costs.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 2-1436/E
Sachivalaya,
Bombay, 29th Sept. 1955.

Read Government Resolution, Legal Department No.9134/E dated the 3rd May 1955.

In the Court of the Civil Judge (Senior Division), Bijapur.
Civil Suit No.190 of 1952.

Hanmantrao Nanasaheb Ghorpade .. Plaintiff
vs.
The State of Bombay. .. Defendant.

: Letter from the District Government Pleader, Bijapur No. 1404 dated the 14th September 1955, stating that the Civil Appeal No.170 of 1954 in the suit noted in the margin was decided by the Assistant Judge, Bijapur on the 14th September 1955, when the following order was passed :-

" The Appeal fails and is dismissed with costs."

Letter from the District Government Pleader, Bijapur No.1404, dated the 14th September 1955 forwarding uncertified copies of the judgment and decree.

RESOLUTION:- The result of the Civil Appeal is recorded.

By order and in the name of the
Governor of Bombay,

original D.P.Shikhare 29/9
D.P.SHIKHARE,
Deputy Secretary to Government.

To

The Revenue Department,
The Collector of Bijapur,
The District Government Pleader, Bijapur.

Issued 30/9/55

Submitted for Signature
28/9

MAP/-
28/9.

Supdt. 28/9
D & S (Civil)

IAL

Submitted

28 Tilain's Bijapur

6/53

TP

29/9

Submitted 29/9

S. Bijapur 6/53

30/9/53